

EXHIBIT A-4

Volume I
Pages 1 to 102
Exhibits None

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

vs.

XOOM ENERGY, LLC; and XOOM
ENERGY NEW YORK, LLC,
Defendants.

VIDEOTAPED DEPOSITION OF DERYA ERYILMAZ,
Ph.D., a witness called by the Defendant, taken
pursuant to the Federal Rules of Civil Procedure,
before Alexander K. Loos, Registered Diplomate
Reporter and Notary Public in and for the
Commonwealth of Massachusetts, at the Offices of
Veritext Legal Solutions, 101 Arch Street, Suite
650, Boston, Massachusetts, on Tuesday, November 15,
2022, commencing at 10:25 a.m.

PRESENT:

Wittels McInturff Palikovic
(By Steven L. Wittels, Esq.; Steven D.
Cohen, Esq. (Via videoconference); and
Ethan D. Roman, Esq. (Via videoconference))
E-mail: Slw@wittelsslaw.com
Sdc@wittelsslaw.com
Edr@wittelsslaw.com

18 Half Mile Road
Armonk, NY 10504
914.775.8862
for the Plaintiffs.

1 utility rates, how they compare. We presented that
 2 in our report.
 3 BY MR. MATTHEWS:
 4 Q. Yes. But the XOOM -- that's XOOM's
 5 reported supply costs compared to the utility's
 6 rate, right?
 7 A. Utility, yeah.
 8 Q. But you don't believe that a comparison of
 9 XOOM's rate to the utility's rate is relevant here?
 10 MR. WITTELS: Objection.
 11 BY MR. MATTHEWS:
 12 Q. Right?
 13 A. No. I guess we -- we -- we used that
 14 Figure 1 to show what the utility in that territory
 15 charged and what that compares to the total cost
 16 of -- of the -- of XOOM.
 17 Q. But you're not offering any sort of damage
 18 model that seeks to compare XOOM's rate to the
 19 utility's rate, right?
 20 MR. WITTELS: Objection.
 21 THE WITNESS: We provided a cross-check
 22 analysis on, you know, what would the overcharges
 23 look like if XOOM has charged utility rates instead
 24 of, you know, its total cost. So that's the

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1 they had just stayed with the utility, right?
 2 MR. WITTELS: Objection.
 3 THE WITNESS: I guess that doesn't -- I
 4 mean, it's not to show that whether they better off,
 5 but it shows -- if the utility rate was charged to
 6 these customers --
 7 BY MR. MATTHEWS:
 8 Q. Uh-huh.
 9 A. -- against the rate that was -- that XOOM
 10 was charging, that would be slightly lower because,
 11 you know, the utility's rates were slightly higher
 12 than the total cost that's presented in the XOOM's
 13 rate-setting workbooks.
 14 Q. Right. I understand the purpose for which
 15 it was shown in the report.
 16 A. Uh-huh.
 17 Q. I'm asking factually, if the court awarded
 18 the damages that you have advocated for under model
 19 one, is it true that XOOM's variable-rate customers
 20 would recoup more money than they would under the
 21 damage model that you've illustrated using the
 22 utility rate?
 23 MR. WITTELS: Objection.
 24 THE WITNESS: When you say "recoup more

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1 cross-check analysis that we did in our report that
 2 yielded a little bit lower damages, I think 49
 3 million, about that.
 4 BY MR. MATTHEWS:
 5 Q. Uh-huh.
 6 49 million under that model instead of 55
 7 and a half --
 8 A. Yeah.
 9 Q. -- right?
 10 A. So that was a cross-check analysis. That
 11 was not, you know, separate models.
 12 We presented two methods only. Uh-huh.
 13 Q. Right. Meaning that if customers had
 14 stayed with the utility -- I'm sorry.
 15 Meaning that if -- XOOM variable-rate
 16 customers would do better than they would have had
 17 they just stayed with the utility, right?
 18 MR. WITTELS: Objection.
 19 THE WITNESS: I don't understand when you
 20 say "better off."
 21 BY MR. MATTHEWS:
 22 Q. If -- if XOOM's variable-rate customers
 23 were awarded the damages that you have put forth
 24 under model one, they would be better off than if

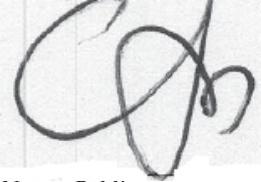
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1 money," is that like -- clearly, the calculation
 2 shows that utilities -- that the value that goes
 3 down to 49 million because utility's rate -- rates
 4 were slightly higher than the total cost. So the
 5 damages would be slightly lower than the method one.
 6 And when you say recouped, the customers
 7 recoup, I don't know what you mean by that.
 8 Q. Recoup, as in recover damages.
 9 A. Yeah. I mean --
 10 Q. Do you understand that?
 11 A. What is the question? I guess I'm not
 12 following the question.
 13 Q. I think we've got it.
 14 Did you do any analysis of what other ESCOs
 15 charged over the same time period?
 16 A. No.
 17 Q. And you don't know how XOOM's rates
 18 compared to other ESCOs' rates during that time?
 19 A. No. That's private information, so I
 20 wouldn't be able to.
 21 Q. What's private information?
 22 A. I mean the other ESCOs' data was not
 23 available to us, so I was not able to compare it to
 24 the other.

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1 COMMONWEALTH OF MASSACHUSETTS)
2 SUFFOLK, SS.)
3 I, Alexander K. Loos, RDR and Notary Public in
4 and for the Commonwealth of Massachusetts, do hereby
5 certify that there came before me on the 15th day of
6 November, 2022, at 10:25 a.m., the person
7 hereinbefore named, who was by me duly sworn to
8 testify to the truth and nothing but the truth of
9 her knowledge touching and concerning the matters in
10 controversy in this cause; that she was thereupon
11 examined upon her oath, and her examination reduced
12 to typewriting under my direction; and that the
13 deposition is a true record of the testimony given
14 by the witness. I further certify that I am neither
15 attorney or counsel for, nor related to or employed
16 by, any attorney or counsel employed by the parties
17 hereto or financially interested in the action.

18  ve hereunto set my hand
19 al this 27th day of
20
21
22
23 Notary Public
24 Commission expires 5/5/28

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1 Steven Wittles
2 Slw@wittelslaw.com
3 November 28, 2022
4 RE: Mirkin vs. XOOM Energy
5 DEPOSITION OF: Derya Eryilmaz 5544030
6 The above-referenced witness transcript is
7 available for read and sign.
8 Within the applicable timeframe, 30 days, the witness
9 should read the testimony to verify its accuracy. If
10 there are any changes, the witness should note those
11 on the attached Errata Sheet.
12 The witness should sign and notarize the
13 attached Errata pages and return to Veritext at
14 errata-tx@veritext.com.
15 According to applicable rules or agreements, if
16 the witness fails to do so within the time allotted,
17 a certified copy of the transcript may be used as if
18 signed.

19 Yours,
20 Veritext Legal Solutions
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